

**REMARKS**

Claims 1 – 21 are pending in the application, with claims 1, 12, 19 and 20 being independent.

Claims 1 – 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fischer, U.S. Publication No. 2003/0214930 A1 (hereinafter “Fischer”) in view of Dapper, U.S. Publication No. 2002/015950 A1 (hereinafter “Dapper”).

Claim 21 is rejected under 35 U.S.C. §103(a) as being unpatentable over Fischer in view of Dapper, further in view of Zehavi (U.S. Patent No. 5,757,76, hereinafter Zehavi).

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or simply is clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., simply to avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, because a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an

independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

### **Rejection Under 35 U.S.C. §103**

#### **Claims 1 – 20**

Claims 1 – 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fischer in view of Dapper. The rejection is traversed.

The Office Action fails to establish a *prima facie* case of obviousness, because the suggested combination of the references does not teach all of the elements of each of the independent claims. According to MPEP §2143, to establish a *prima facie* case of obviousness under §103, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). More specifically, contrary to the Examiner's suggestion, the primary reference does not appear to teach at least the following feature recited in the claims:

“sorting data packets received during a predetermined time period into groups according to for which communication device of said network the received data packets are intended,”(emphasis added).

Rather, the reference describes receiving a packet, constructing an aggregated fragment acknowledgement frame (AFAF), and sending it back. Accordingly, even assuming that AFAF provides for determining a device for which the packet is intended, no pre-determined time period is used. Rather, AFAFs are sent back almost immediately. Further, because no time period is used and no packet accumulation occurs, the reference cannot suggest the sorting feature of Applicants' claims. Moreover, the suggested combination of the reference fails to teach the “sorting” element of claim 1 because the Examiner fails to provide a proper reference for teaching: “sorting data packets received during a predetermined time period.”

The Examiner acknowledges that Fisher does not explicitly disclose orthogonally encode the sorted time aligned data packets within each group. To cure Fisher's deficiencies, the Examiner appeals to Dapper. Dapper, however, fails to bridge the substantial gap between Fischer and Applicants' invention of claim 1.

Thus, it is further shown that claim 1 has been erroneously rejected under 35 U.S.C. §103(a) because there are missing claimed features not taught/suggested by the cited references.

Further, in rejecting claim 1, the Examiner failed to establish a *prima facie* case of obviousness, because there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l v. Teleflex, Inc.* 127 S. Ct. 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). In an attempt to articulate a motivation, the Examiner makes the following statement:

“Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to apply the teaching of Dapper to the method disclosed by Fisher to achieve the required features.” (See Office Action page 3). The Examiner failed to articulate any motivation, let alone a convincing one. The Examiner’s conclusory statement is unaccompanied by evidence or reasoning and is entirely inadequate to support the rejection. *In re Sichert*, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977). Accordingly, the Examiner fails to meet the requirements set forth in MPEP §706.02(j).

Therefore, the combination of Fischer and Dapper does not teach or suggest all of the elements of Applicants’ claim 1, and thus, a *prima facie* case of obviousness with respect to claim 1 has not been established. Independent claims 12, 19, and 20 recite at least elements similar to the elements discussed above. Accordingly, similar to claim 1 and for at least the reasons discussed above, a *prima facie* case of obviousness with respect to claims 12, 19, and 20 has not been established.

Accordingly, the combination of Fischer and Dapper does not teach or suggest all of the elements of Applicants’ claims 12, 19, and 20, and thus, a *prima facie* case of obviousness with respect to claims 12, 19, and 20 has not been established. Because all of the dependent claims depending from the independent claims include all of the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable under 35 U.S.C. §103(a) over Fischer in view of Dapper. Therefore, claims 2 – 11 and 13 – 18 are allowable under 35 U.S.C. §103(a) over Fischer in view of Dapper. The Examiner is respectfully requested to withdraw the rejection.

**Claim 21**

Claim 21 is rejected under 35 U.S.C. §103(a) as being unpatentable over Fischer in view of Dapper, further in view of Zehavi. The rejection is traversed.

This ground of rejection applies only to a dependent claim and is predicated on the validity of the rejection under 35 U.S.C. §103 given Fischer in view of Dapper. Because the rejection under 35 U.S.C. §103 given Fischer in view of Dapper has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Zehavi supplies that which is missing from Fischer and Dapper to render the independent claims unpatentable, this ground of rejection cannot be maintained.

Still further, the Examiner also failed to provide some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In a manner similar to the rejection of claim 1, the Examiner articulates the result of modifying the reference, to wit, to use a global timing schedule for the communications network to ensure the synchronization of all the devices in the network. The Examiner's conclusory statement is unaccompanied by evidence or reasoning and is entirely inadequate to support the rejection. *In re Sichert*, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977). Accordingly, the Examiner fails to meet the requirements set forth in MPEP §706.02(j). The Examiner is respectfully requested to withdraw the rejection.


**Conclusion**

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 842-8110 x 120 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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